

No. 76-1340

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

WILLIAM R. BONNER, ET AL., APPELLANTS

v.

**W. MICHAEL BLUMENTHAL, SECRETARY OF THE
TREASURY, ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**MOTION OF THE SECRETARY OF THE TREASURY
TO DISMISS**

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Pursuant to Rule 16(1)(a) of the Rules of this Court, the Solicitor General, on behalf of the Secretary of the Treasury and the United States, moves to dismiss this appeal from the judgment of the district court.

Appellants, retired or self-employed individuals, brought this action challenging the constitutionality of procedures under the Executive Salary Cost-of-Living Adjustment Act, Pub. L. 94-82, 89 Stat. 419, for increasing congressional salaries to reflect increases in the cost of living. In particular, appellants challenge Section 204(a) of the Act, 89 Stat. 421, 2 U.S.C. (Supp. V) 31, which provides for automatic periodic adjustments of the compensation paid to Members of Congress, to reflect the adjustments in pay that are made for federal employees classified under the General Schedule

pay system (see 5 U.S.C. (and Supp. V) 5305)¹ (J.S. 8). Appellants seek to enjoin any increased payment to Members of Congress other than that actually voted on by Members of Congress, including any increase implemented under Section 204(a).

A three-judge district court, convened pursuant to 28 U.S.C. 2282 (J.S. 2),² dismissed this action solely on the ground that appellants lack standing (J.S. App. 1a-3a).³ Appellants have appealed to this Court pursuant to 28 U.S.C. 1253 (J.S. 3; J.S. App. 1b-3b). A decision of a three-judge district court dismissing an action for lack of standing, however, is reviewable in the first instance by the court of appeals, not this Court. *Gonzalez v. Employees Credit Union*, 419 U.S. 90; *Dickson v. Ford*, 419 U.S. 1085; *MTM, Inc. v. Baxley*, 420 U.S. 799.

Since the complaint in the present case was dismissed solely on the ground that appellants lack standing, this

¹A more detailed discussion of the Adjustment Act is set forth in our motion to affirm in *Pressler v. Blumenthal*, No. 76-1005, vacated and remanded May 16, 1977. A copy of that motion is being furnished to the appellants.

²On August 12, 1976, while this action was pending in the district court, 28 U.S.C. 2282 was repealed by Section 2 of Pub. L. 94-381, 90 Stat. 1119. That repeal does not, however, apply to any action commenced on or before the date of enactment of Pub. L. 94-381 (see Section 7, 90 Stat. 1120).

³Appellants in their Jurisdictional Statement also challenge Section 203 of the Executive Salary Cost-of-Living Adjustment Act, 89 Stat. 420, 3 U.S.C. (Supp. V) 104, a comparable provision relating to cost-of-living adjustments to the Vice President's salary. This statute was not, however, referred to in appellant's complaint, nor addressed by the district court. The district court's holding that appellants lack standing would, in any event, appear to apply equally to appellants' challenge to Section 203.

Court does not have jurisdiction to consider this appeal, and should dismiss it.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1977.